

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JERRY EUGENE WHITLEY, #227246,)
)
Petitioner,)
v.) CASE NO. 3:05-cv-0427-MEF
)
J. C. GILES, *et al.*,)
)
Respondents.)

O R D E R

This cause is now before the court on a Notice of Appeal which the court construes to contain a motion to proceed *in forma pauperis* filed on November 14, 2006 (Doc. #28).

28 U.S.C.A. § 1915(a) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam), *cert. denied*, 454 U.S. 903, 102 S.Ct. 411 (1981); *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11t Cir. 1982) (per curiam), *cert. denied*, 457 1122, 102 S.Ct. 2938 (1982); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010, 102 S.Ct. 2303 (1982). Applying this standard, this court is of the opinion that the petitioner's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See, e.g., Rudolph v. Allan, supra; Brown v. Pena*, 441 F.Supp.

1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED that the petitioner's motion to proceed on appeal *in forma pauperis* is DENIED; and that the appeal in this cause is certified, pursuant to 28 U.S.C.A. § 1915(a), as not taken in good faith.

DONE this 16th day of November, 2006.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE